

Change in an employment relationship

A change in an employment relationship means a change of any of its component but the original employment relationship continues to exist.

The three components of each legal relationship are:

- Subject
- Object
- Content

1. Change in a subject of an employment relationship

The subjects of an employment relationship are:

- An employee
- An employer

1.1 Modification of an employee

The modification of an employee is not possible. In an employment relationship an employee performs his work for an employer personally. The modification of an employee would cause the termination of the original employment relationship and the formation of new employment relationship.

1.2. Modification of an employer

The Czech labour law is in accordance with the EU Law

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

Section 338 of Labour Code

Changing of an employer is possible. This situation means the transference of rights and duties arising from labour relations. It may only occur in the cases laid down in the Labour Code or in other statutory provisions.

In the event of transfer of an employer's business activity, or its part, or in the event of transfer of an employer's tasks, or some of them to another employee, the rights and duties from labour relations shall pass in full scope to the recipient employer.

The employer's tasks or activities include:

- Tasks related to production, or
- Provision of services, or
- Similar activities

undertaken in employer's name on his liability in facilities determined for this performance.

The legal cause of the transfer is not important.

It means that when changing for example a legal entity under Commercial Code, this change doesn't cause the termination of employment relationships or other labour relationships. The rights and duties of employees remain the same. If new employer doesn't want to employ them he has to give them a notice of termination for reason of organisational changes.

Section 338 sub 3 lays down an exemption. The rights and duties from labour relations that were terminated until the day of the transfer remain unaffected unless, statutory provisions provides for otherwise for example the rights and duties relating to compensation for damages when the employment relationship is terminated.

2. Change in the object of an employment relationship

The change of the object is not possible. The object of a legal relationship makes difference of the legal relationship from other legal relationships. The change of object invokes the change of the legal relationship.

3. Change in the content

This is the most frequent type of modification of an employment relationship. It caused by:

- a) Changing of legislation
- b) A legal act one-sided or two-sided

Legal act changing the content of an employment relationship are:

1. Agreement
2. Transfer to alternative work
3. Business trip
4. Transfer to another place of work

3.1. Agreement

The agreement means the identical manifestation of will of both parties to change their employment relationship. It is possible to change a mandatory arrangement (type of work, place of work) or any other arrangement of the employment contract.

Sec. 40 (1) lays down that the terms of an employment contract may only be changed if the employer and the employee agree on this alteration. This agreement must be made in writing but if the parties don't meet this condition the agreement is valid anyway. This results from sec. 21 (1).

3.2. Transfer to alternative work

Transfer to alternative work is unilateral legal act made by the employer. It can never be made by the employee.

This legal act causes the change of the type of work that is agreed in the employment contract. The employer should first transfer his employee within the framework of the type of work agreed in the employment contract. If it is not possible he may transfer him to another work. The Czech Labour Code prefers the transfer to alternative work within the type of work agreed in the employment contract to transfer to the work that was not agreed in the employment contract.

The work for which the employee is transferred must be suitable for him according to his state of health, abilities and, as far as possible, to his qualification.

The section 41 of the Labour Code provides for the situations when the employer has a duty to transfer his employee to alternative work and the situations when the employer has right to transfer his employee to alternative work.

41 (1) the employer shall transfer his employee to alternative work

- From medical reasons at the employee's side (41 (1) a), b), d), f)
- When a woman employee who is pregnant, breastfeeding, or employee mother until the ninth month after the childbirth performs work that is forbidden for such women,

or when according to medical certificate this woman is not allowed to perform her work, or at the request of such a woman who performs night-work.

- The transfer is necessary according to a final ruling of the court, government agency or self-area local authority

The employer may transfer his employee to alternative work (even without the employee's consent):

- If the employee has been given notice of termination for certain reasons (he breached his duty, or doesn't meet the prerequisites for performing his work, or doesn't meet the conditions for performing his work).
- If a criminal proceedings have been instituted against the employee. The reason for the proceedings is a wilful criminal offence committed during performance of work, or is connected with performance or work and due to this criminal offence the employee has caused damage to his employer. The transfer may only last until the closing of the criminal proceedings.
- If an employee has temporarily lost his prerequisites laid down by statutory provisions to perform his work.
- The transfer is inevitable for the reason of a natural disaster or similar.
- If the employer transfers his employee to alternative work because of the interruption of work caused by unfavourable weather he shall obtain the employee's consent.

3.3 Business trip

A business trip means a limited period of time for which an employer instructs his employee to go away from his agreed place of work. It may last for a necessary period of time.

Some categories of employees are protected:

- a pregnant woman
- an employee taking care of children up to the age of eight years
- a single employee taking care of children up to the age of fifteen years or
- an employee who takes care of disabled person

The employer must obtain the consent with the business trip for each business trip.

The employee performs his work in other establishment of his employer or is instructed to another employer.

The employee performs his work during the business trip according to the instructions of the managers who instructed him to the business trip.

It is possible that employee performs his work in establishment of another employer. Then his original employer may authorize the other employer to give instruction for work, organise and control his work. This employer mustn't make any legal act to the employee. He is not allowed to terminate the employment relationship change the employment relationship and so on.

3.4. Transfer to another place of work

An employee may be transferred only with their consent.

The transfer to another place of work is possible only within the employer.

The employer may only transfer certain categories of employees to another place of work at their request. These categories are the same:

- a pregnant woman,
- an employee taking care of children up to the age of eight years,
- a single employee taking care of children up to the age of fifteen years, or
- an employee who takes care of disabled person.

